IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

WP(C).No. 2524 of 2007(A)

AGAINST THE ORDER IN EP. 122 /2005 IN
OS.429/2004 of MUNSIFF COURT,ALUVA

.....

PETITIONER:

K.A. JOSE
S/O.AUGUSTI, AGED 36 YEARS
MALAYATTOOR KARA
MALAYATTOOR VILLAGE
ALUVA TALUK, ERNAKULAM.

BY ADV. SRI.SABU THOZHUPPADAN
SRI.BIJU THOZHUPPADAN

RESPONDENTS:

---

1. P.V.THOMAS
   S/O.VARGHESE, AGED 38 YEARS,
   PARAPPILLY HOUSE,
   MALAYATTOOR KARA
   MALAYATTOOR VILLAGE
   ALUVA TALUK, ERNAKULAM.

2. STATE OF KERALA
   REPRESENTED BY THE GOVERNMENT PLEADER
   HIGH COURT OF KERALA
   ERNAKULAM.

BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN FOR R2

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22 /1 /2007 THE COURT ON 22/01/2007 DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

==========

W.P.(C) NO.2524 OF 2007

==========

Dated this the 22nd day of January, 2007

JUDGMENT

Petitioner is judgment debtor in O.S.429/04. First respondent is the decree holder. E.P. 122/06 was filed for arrest and detention of the petitioner contending that he has sufficient means; but neglected to pay the decree debt. Petitioner pleaded no means. An order of arrest was passed finding that petitioner has sufficient means. Petitioner filed E.A.303/06 under sections 55(3) and 55(4) of Civil Procedure Code. Under Ext.P7 order learned Munsiff dismissed the application. This petition is filed under Article 227 of Constitution of India to quash Ext.P7 order.

2.Learned counsel appearing for petitioner was heard.

3. The argument of learned counsel appearing for petitioner was that under sub section (3) of Section 55, when a judgment debtor is arrested and

brought before court, the court has to inform him that he may apply to be declared an insolvent and that he may be discharged, if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force and under sub section (4) if the judgment debtor expresses his intention to apply to be declared an insolvent and furnishes security to the satisfaction of the court that within one month so apply, and that he will appear, when called upon, he may be released and if he fails to apply the court may direct the security to be realised or commit him to civil prison. The argument of learned counsel appearing for petitioner is that learned Munsiff has not correctly appreciated the prayer of the petitioner and therefore Ext.P7 order is to be quashed. Learned counsel appearing for petitioner submits that subsequent to the order petitioner was arrested and therefore petitioner is entitled to apply under section 55(3).

4. On hearing learned counsel appearing for petitioner, I do not find any infirmity in Ext.P7 order warranting interference in exercise of the extra ordinary jurisdiction of this court under Article 227 of Constitution of India. Sub section (3) of Section 55 applies when judgment debtor is arrested and brought before the court. The court has a duty at that time to inform him that he may apply to be declared an solvent. Sub section (4) enables the judgment debtor to express his intention to apply to be declared an insolvent and to furnish security to the satisfaction of court, to release him to apply before the insolvency court within one month to declare himself as an insolvent. Learned counsel appearing for petitioner submitted that eventhough petitioner filed an insolvency petition, he could not get an order of stay. Under Ext.P7 order, learned Munsiff held that petitioner is not entitled to apply under sub section (3) of Section 55, before he was arrested and brought before the court. The finding

cannot be said to be illegal. If submission of petitioner is correct and petitioner was arrested and detained in civil prison, petitioner is at liberty to file an application as provided under sub section (4) of Section 55 before the executing court. If such an application is filed, executing court has to pass appropriate order in accordance with law.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006